

ESTTA Tracking number: **ESTTA561410**

Filing date: **09/25/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Frito-Lay North America, Inc.
Granted to Date of previous extension	09/25/2013
Address	7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES
Attorney information	Jeanette S. Zimmer Frito-Lay North America, Inc. 7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES trademarks@pepsico.com, jeanette.zimmer@pepsico.com, donna.j.sanders@pepsico.com

Applicant Information

Application No	85820051	Publication date	05/28/2013
Opposition Filing Date	09/25/2013	Opposition Period Ends	09/25/2013
Applicant	Real Foods Pty Ltd 47 Campbell Road St. Peters, NSW, 2044 AUSTRALIA		

Goods/Services Affected by Opposition

Class 030. First Use: 2007/00/00 First Use In Commerce: 2007/00/00
All goods and services in the class are opposed, namely: crispbread slices primarily made of rice

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23
Related Proceedings	Serial No. 79111074 on which a Notice of Opposition was filed today.
Attachments	NOO RICE THINS.pdf(691631 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jeanette S. Zimmer/
Name	Jeanette S. Zimmer
Date	09/25/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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FRITO-LAY NORTH AMERICA, INC.	:	In the Matter of Application
	:	Serial No. 85820051 for the mark
Opposer,	:	RICE THINS
	:	
v.	:	Published in the Official Gazette
	:	on May 28, 2013
REAL FOODS PTY LTD.	:	
	:	
Applicant.	:	Opposition No. _____
-----X		

NOTICE OF OPPOSITION

Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024, hereby opposes the application of Real Foods Pty Ltd. (hereinafter "Applicant"), an Australian entity corporation, pursuant to 37 CFR § 2.104(a), for an application to register RICE THINS ("the Application"), U.S. Application Serial No. 85820051, in Class 30.

As grounds for opposition, Opposer states:

1. Frito-Lay North America, Inc., through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods, including a variety of crackers and crisp breads, are marketed and sold in tremendous quantities on a nationwide basis, supported by many millions of dollars of advertising and promotion each year. Opposer's snack foods are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. Opposer has manufactured snack foods for well over 50 years. Opposer has expanded its product lines to identify other snack food styles, flavors and shapes, manufactured and sold exclusively by Opposer.

4. Applicant's RICE THINS mark was published for "crispbread slices primarily made of rice" in International Class 30.

5. Applicant disclaimed the descriptive wording "RICE" from the Application.

6. The word THINS is a very common word used by the public and other food manufacturers to describe thinly sliced or thin-shaped food products.

7. On information and belief, the word THINS is frequently disclaimed on the Principal Register from applications and registrations of marks that include the word THINS for food products. Applicant did not disclaim THINS in the Application.

8. Registration of the Application is barred by Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1) because Applicant seeks to register a mark that is merely descriptive of the goods inasmuch as it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

9. The entirety of Applicant's mark describes a characteristic and appearance of the goods, in that RICE THINS describes thin slices of crispbread made of rice.

10. Applicant's alleged mark consists of a combination of two descriptive words that does not evoke a new and unique commercial impression. The component words, RICE and THINS, each retain their descriptive significance in relation to the goods, so the combination results in a composite that is itself descriptive. See In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004)

11. Applicant has not provided proof that the mark has acquired distinctiveness as applied to THINS used on Applicant's goods in commerce and therefore is not registrable on the Principal Register under §2(f) of the Trademark Act, 15 U.S.C. §1052(f).

12. Registration of the Application would provide color of *prima facie* exclusive rights to Applicant to use the mark and phrase. Therefore, allowing registration of Applicant's mark is a source of damage and injury to Opposer inasmuch as it would preclude Opposer from using the same or similar descriptive wording or phrasing in its advertising for snack food products. See In re Abcor Development Corp., 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978)(descriptive marks should not be registered in order to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products).

13. Registration of the Application should be refused in order to maintain freedom of the public and Opposer to use the descriptive language included in the Application that is necessary to advertise and properly describe Opposer's own products. See Estate of P.D. Beckwith, Inc. v. Comm'r of Patents, 252 U.S. 538, 543-44 (1920).

WHEREFORE, for the reasons set forth above, Opposer prays that the Application be rejected, and that registration of the Application be denied and refused.


This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: September 25, 2013

By:


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant on September 25, 2013, by sending same via First Class mail, postage prepaid, to the counsel of record:

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